

Legal Profession Board of Tasmania

Medium Neutral Citation:	Complainant v A Practitioner [2017] LPBT 64
Considered / Heard:	18 December 2017
Determination date:	20 December 2017
Jurisdiction:	Legal Profession Board, Tasmania
Before:	Mr K Pitt QC (Chairman) Mr G Jones (Legal Member) Mr A Mihal (Legal Member) Mr D Lewis (Legal Member) Ms J Paxton (Lay Member) Mr P Dane (Lay Member)
Determination:	The complaint is summarily dismissed pursuant to s 433(1)(a) of the <i>Legal Profession Act 2007</i> .
Catchwords:	PROFESSIONS AND TRADES- Lawyers- Complaints and Discipline- Professional misconduct and unsatisfactory professional conduct- Request for payment of settlement funds where there is a fruits of litigation lien – Client instructions relating to trust monies.
Legislation:	<i>Legal Profession Act</i> (Tas) 2007 s 433(1)(a)
Category:	Determination
Parties:	(Complainant) (Practitioner)
File Number:	2017/64

REASONS FOR DETERMINATION

Background

1. This matter comes to the Board by way of a complaint received on 23 October 2017.
2. The Complainant originally engaged a law practice ('the Law Practice') to represent him in a worker's compensation claim pursuant to a no win / no fee agreement around September 2015. Carriage of this matter was with Ms S.
3. The Complainant's former employer's insurer engaged practitioners to represent the employer in the dispute.
4. In early March 2017, the Complainant and the Law Practice were in dispute as to the termination of the retainer. Subsequently the Complainant engaged the Practitioner to represent him.
5. In early April 2017, Ms S wrote to the Practitioner and advised that prior to providing their file, the Complainant was required to sign an irrevocable authority to pay their fees in the sum of \$8,000.00 plus GST. In that letter, Ms S asserted 'a fruits of litigation' lien. Ms S also wrote to the insurer's practitioner about her outstanding fees.
6. By letter dated 28 April 2017, the Practitioner returned an amended Irrevocable Authority duly signed by the Complainant on 27 April 2017.
7. In early October 2017, the worker's compensation claim settled, prior to the hearing which was scheduled for later that month.
8. In mid October 2017, the Practitioner wrote to the Complainant and provided advice as to the Irrevocable Authority, which included, that it did not bind the Practitioner nor his firm and that if the Complainant instructed the Practitioner to not pay the legal fees to the Law Practice he would be required to follow those instructions, but that he and/or his firm would be obliged to either hold the equivalent of the claimed legal fees in its trust account or pay them to the Supreme Court.
9. After the Board received the complaint, the insurer paid part of the settlement sum and the insurer's lawyers have retained the funds claimed by the Law Practice pursuant to the Irrevocable Authority and those funds were not paid to the Practitioner's firm.

The Complaint

10. The Complaint alleges the Practitioner:
Failed to act as instructed by the Complainant in circumstances where:
 - a. Around mid October 2017 the Practitioner provided advice that he could instruct the Practitioner to not pay funds to the Law Practice;

- b. The Complainant instructed the Practitioner to not pay the funds to the Law Practice and to pay the money directly to him;
- c. The Practitioner has not paid the funds to the Complainant.

Relevant legislation and the law

- 11. The Board has considered the submissions and supporting evidence from each of the parties.
- 12. The Practitioner is an Australian legal practitioner within the meaning of s 6 of the *Legal Profession Act 2007* ('the Act').
- 13. The Practitioner, in his advice to the Complainant of mid October 2017, correctly and clearly advised that the Law Practice had asserted a lien over part of the settlement sum and that his firm was obliged to hold those funds in trust pending resolution of the dispute between the Complainant and the Law Practice, or alternatively pay the sum into the Supreme Court by way of interpleader. The Complainant appears not to have understood that advice or is disregarding it.
- 14. The Practitioner made it clear to the Complainant in a letter of early October 2017 that if he was to disburse the funds to the Complainant, he or his firm may become liable to the Law Practice.
- 15. Notwithstanding that the Complainant later changed his mind as to the disputed funds not being held in trust, and sought they be paid to him, the position adopted by the Practitioner was not improper as was his contract with both the insurer's solicitors and the Law Practice.
- 16. In correspondence to the Board, the Complainant has also alleged that the fees charged for the advice received from the Practitioner was somehow inappropriate and should be reimbursed. The Board does not accept that to be the case and it is not supported by the evidence.
- 17. Irrespective of the Complainant's instructions, it is an incontrovertible fact that the disputed funds were never paid to the Practitioner, having been held by the insurer's solicitors pending resolution of the dispute between the Complainant and the Law Practice. As such the Complaint must be dismissed.

DETERMINATION

The Complaint is summarily dismissed pursuant to section 433(1)(a) of the *Legal Profession Act 2007* as the Board is of the opinion the complaint is misconceived.

Legal Profession Board of Tasmania

Per:



Board Member

Please note that within 21 days after the date of this determination the complainant or the legal practitioner, the subject of the complaint may apply to the Disciplinary Tribunal or Supreme Court to have this matter heard by the Disciplinary Tribunal or Supreme Court and may make an application to the Disciplinary Tribunal or Supreme Court to stay the determination pending the finalisation of such an application.

Please be aware that an application made to either the Disciplinary Tribunal or Supreme Court may, in the event that application is unsuccessful, result in a costs order against you. Accordingly, it is recommended that independent legal advice is sought prior to making such an application.

Any application to the Disciplinary Tribunal must be in accordance with the form prescribed under the Legal Profession (Disciplinary Tribunal) Rules 2010 (see <http://www.lpbt.com.au/policy-and-guidelines/>).

The contact details of the relevant bodies are as follows:

Disciplinary Tribunal Secretary Mrs Maria Dwyer, Ogilvie Jennings: 6272 6860

Supreme Court, General Enquiries: 1300 664 608